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**H. R. 4904**

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 27 (legislative day, SEPTEMBER 22), 2000

Revised

OCTOBER 2 (legislative day, SEPTEMBER 22), 2000

Read twice and placed on the calendar

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**AN ACT**

To express the policy of the United States regarding the United States relationship with Native Hawaiians, to provide a process for the reorganization of a Native Hawaiian government and the recognition by the United States of the Native Hawaiian government, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. FINDINGS.**

4       Congress makes the following findings:

5               (1) The Constitution vests Congress with the  
6       authority to address the conditions of the indige-  
7       nous, native people of the United States.

8               (2) Native Hawaiians, the native people of the  
9       Hawaiian archipelago which is now part of the  
10      United States, are indigenous, native people of the  
11      United States.

12              (3) The United States has a special trust rela-  
13      tionship to promote the welfare of the native people  
14      of the United States, including Native Hawaiians.

15              (4) Under the treaty making power of the  
16      United States, Congress exercised its constitutional  
17      authority to confirm a treaty between the United  
18      States and the government that represented the Ha-  
19      waiian people, and from 1826 until 1893, the United  
20      States recognized the independence of the Kingdom  
21      of Hawaii, extended full diplomatic recognition to  
22      the Hawaiian government, and entered into treaties  
23      and conventions with the Hawaiian monarchs to gov-  
24      ern commerce and navigation in 1826, 1842, 1849,  
25      1875, and 1887.

1           (5) Pursuant to the provisions of the Hawaiian  
2       Homes Commission Act, 1920 (42 Stat. 108, chap-  
3       ter 42), the United States set aside 203,500 acres  
4       of land in the Federal territory that later became  
5       the State of Hawaii to address the conditions of Na-  
6       tive Hawaiians.

7           (6) By setting aside 203,500 acres of land for  
8       Native Hawaiian homesteads and farms, the Act as-  
9       sists the Native Hawaiian community in maintaining  
10      distinct native settlements throughout the State of  
11      Hawaii.

12          (7) Approximately 6,800 Native Hawaiian les-  
13      sees and their family members reside on Hawaiian  
14      Home Lands and approximately 18,000 Native Ha-  
15      waiians who are eligible to reside on the Home  
16      Lands are on a waiting list to receive assignments  
17      of land.

18          (8) In 1959, as part of the compact admitting  
19      Hawaii into the United States, Congress established  
20      the Ceded Lands Trust for five purposes, one of  
21      which is the betterment of the conditions of Native  
22      Hawaiians. Such trust consists of approximately  
23      1,800,000 acres of land, submerged lands, and the  
24      revenues derived from such lands, the assets of

1       which have never been completely inventoried or seg-  
2       regated.

3           (9) Throughout the years, Native Hawaiians  
4       have repeatedly sought access to the Ceded Lands  
5       Trust and its resources and revenues in order to es-  
6       tablish and maintain native settlements and distinct  
7       native communities throughout the State.

8           (10) The Hawaiian Home Lands and the Ceded  
9       Lands provide an important foundation for the abil-  
10      ity of the Native Hawaiian community to maintain  
11      the practice of Native Hawaiian culture, language,  
12      and traditions, and for the survival of the Native  
13      Hawaiian people.

14          (11) Native Hawaiians have maintained other  
15      distinctly native areas in Hawaii.

16          (12) On November 23, 1993, Public Law 103–  
17      150 (107 Stat. 1510) (commonly known as the Apol-  
18      ogy Resolution) was enacted into law, extending an  
19      apology on behalf of the United States to the Native  
20      people of Hawaii for the United States role in the  
21      overthrow of the Kingdom of Hawaii.

22          (13) The Apology Resolution acknowledges that  
23      the overthrow of the Kingdom of Hawaii occurred  
24      with the active participation of agents and citizens  
25      of the United States and further acknowledges that

1 the Native Hawaiian people never directly relin-  
2 quished their claims to their inherent sovereignty as  
3 a people over their national lands to the United  
4 States, either through their monarchy or through a  
5 plebiscite or referendum.

6 (14) The Apology Resolution expresses the com-  
7 mitment of Congress and the President to acknowl-  
8 edge the ramifications of the overthrow of the King-  
9 dom of Hawaii and to support reconciliation efforts  
10 between the United States and Native Hawaiians;  
11 and to have Congress and the President, through the  
12 President's designated officials, consult with Native  
13 Hawaiians on the reconciliation process as called for  
14 under the Apology Resolution.

15 (15) Despite the overthrow of the Hawaiian  
16 government, Native Hawaiians have continued to  
17 maintain their separate identity as a distinct native  
18 community through the formation of cultural, social,  
19 and political institutions, and to give expression to  
20 their rights as native people to self-determination  
21 and self-governance as evidenced through their par-  
22 ticipation in the Office of Hawaiian Affairs.

23 (16) Native Hawaiians also maintain a distinct  
24 Native Hawaiian community through the provision  
25 of governmental services to Native Hawaiians, in-

1 including the provision of health care services, edu-  
2 cational programs, employment and training pro-  
3 grams, children's services, conservation programs,  
4 fish and wildlife protection, agricultural programs,  
5 native language immersion programs and native lan-  
6 guage immersion schools from kindergarten through  
7 high school, as well as college and master's degree  
8 programs in native language immersion instruction,  
9 and traditional justice programs, and by continuing  
10 their efforts to enhance Native Hawaiian self-deter-  
11 mination and local control.

12 (17) Native Hawaiians are actively engaged in  
13 Native Hawaiian cultural practices, traditional agri-  
14 cultural methods, fishing and subsistence practices,  
15 maintenance of cultural use areas and sacred sites,  
16 protection of burial sites, and the exercise of their  
17 traditional rights to gather medicinal plants and  
18 herbs, and food sources.

19 (18) The Native Hawaiian people wish to pre-  
20 serve, develop, and transmit to future Native Hawai-  
21 ian generations their ancestral lands and Native Ha-  
22 waiian political and cultural identity in accordance  
23 with their traditions, beliefs, customs and practices,  
24 language, and social and political institutions, and to

1        achieve greater self-determination over their own af-  
2        fairs.

3            (19) This Act provides for a process within the  
4        framework of Federal law for the Native Hawaiian  
5        people to exercise their inherent rights as a distinct  
6        aboriginal, indigenous, native community to reorga-  
7        nize a Native Hawaiian government for the purpose  
8        of giving expression to their rights as native people  
9        to self-determination and self-governance.

10          (20) The United States has declared that—

11            (A) the United States has a special respon-  
12          sibility for the welfare of the native peoples of  
13          the United States, including Native Hawaiians;

14            (B) Congress has identified Native Hawai-  
15          ians as a distinct indigenous group within the  
16          scope of its Indian affairs power, and has en-  
17          acted dozens of statutes on their behalf pursu-  
18          ant to its recognized trust responsibility; and

19            (C) Congress has also delegated broad au-  
20          thority to administer a portion of the Federal  
21          trust responsibility to the State of Hawaii.

22          (21) The United States has recognized and re-  
23          affirmed the special trust relationship with the Na-  
24          tive Hawaiian people through—

1 (A) the enactment of the Act entitled “An  
2 Act to provide for the admission of the State of  
3 Hawaii into the Union”, approved March 18,  
4 1959 (Public Law 86–3; 73 Stat. 4) by—

5 (i) ceding to the State of Hawaii title  
6 to the public lands formerly held by the  
7 United States, and mandating that those  
8 lands be held in public trust for five pur-  
9 poses, one of which is for the betterment  
10 of the conditions of Native Hawaiians; and

11 (ii) transferring the United States re-  
12 sponsibility for the administration of the  
13 Hawaiian Home Lands to the State of Ha-  
14 waii, but retaining the authority to enforce  
15 the trust, including the exclusive right of  
16 the United States to consent to any actions  
17 affecting the lands which comprise the cor-  
18 pus of the trust and any amendments to  
19 the Hawaiian Homes Commission Act,  
20 1920 (42 Stat. 108, chapter 42) that are  
21 enacted by the legislature of the State of  
22 Hawaii affecting the beneficiaries under  
23 the Act.

24 (22) The United States continually has recog-  
25 nized and reaffirmed that—



1 (A) Native Hawaiians have a cultural, his-  
2 toric, and land-based link to the aboriginal, na-  
3 tive people who exercised sovereignty over the  
4 Hawaiian Islands;

5 (B) Native Hawaiians have never relin-  
6 quished their claims to sovereignty or their sov-  
7 ereign lands;

8 (C) the United States extends services to  
9 Native Hawaiians because of their unique sta-  
10 tus as the aboriginal, native people of a once  
11 sovereign nation with whom the United States  
12 has a political and legal relationship; and

13 (D) the special trust relationship of Amer-  
14 ican Indians, Alaska Natives, and Native Ha-  
15 waiians to the United States arises out of their  
16 status as aboriginal, indigenous, native people  
17 of the United States.

18 **SEC. 2. DEFINITIONS.**

19 In this Act:

20 (1) ABORIGINAL, INDIGENOUS, NATIVE PEO-  
21 PLE.—The term “aboriginal, indigenous, native peo-  
22 ple” means those people whom Congress has recog-  
23 nized as the original inhabitants of the lands and  
24 who exercised sovereignty prior to European contact

1 in the areas that later became part of the United  
2 States.

3 (2) ADULT MEMBERS.—The term “adult mem-  
4 bers” means those Native Hawaiians who have at-  
5 tained the age of 18 at the time the Secretary pub-  
6 lishes the final roll, as provided in section 7(a)(3) of  
7 this Act.

8 (3) APOLOGY RESOLUTION.—The term “Apol-  
9 ogy Resolution” means Public Law 103–150 (107  
10 Stat. 1510), a joint resolution offering an apology to  
11 Native Hawaiians on behalf of the United States for  
12 the participation of agents of the United States in  
13 the January 17, 1893 overthrow of the Kingdom of  
14 Hawaii.

15 (4) CEDED LANDS.—The term “ceded lands”  
16 means those lands which were ceded to the United  
17 States by the Republic of Hawaii under the Joint  
18 Resolution to provide for annexing the Hawaiian Is-  
19 lands to the United States of July 7, 1898 (30 Stat.  
20 750), and which were later transferred to the State  
21 of Hawaii in the Act entitled “An Act to provide for  
22 the admission of the State of Hawaii into the  
23 Union” approved March 18, 1959 (Public Law 86–  
24 3; 73 Stat. 4).

1           (5) COMMISSION.—The term “Commission”  
2 means the commission established in section 7 of  
3 this Act to certify that the adult members of the Na-  
4 tive Hawaiian community contained on the roll de-  
5 veloped under that section meet the definition of Na-  
6 tive Hawaiian, as defined in paragraph (7)(A).

7           (6) INDIGENOUS, NATIVE PEOPLE.—The term  
8 “indigenous, native people” means the lineal de-  
9 scendants of the aboriginal, indigenous, native peo-  
10 ple of the United States.

11          (7) NATIVE HAWAIIAN.—

12           (A) Prior to the recognition by the United  
13 States of a Native Hawaiian government under  
14 the authority of section 7(d)(2) of this Act, the  
15 term “Native Hawaiian” means the indigenous,  
16 native people of Hawaii who are the lineal de-  
17 scendants of the aboriginal, indigenous, native  
18 people who resided in the islands that now com-  
19 prise the State of Hawaii on or before January  
20 1, 1893, and who occupied and exercised sov-  
21 ereignty in the Hawaiian archipelago, including  
22 the area that now constitutes the State of Ha-  
23 waii, and includes all Native Hawaiians who  
24 were eligible in 1921 for the programs author-  
25 ized by the Hawaiian Homes Commission Act

1 (42 Stat. 108, chapter 42) and their lineal de-  
2 scendants.

3 (B) Following the recognition by the  
4 United States of the Native Hawaiian govern-  
5 ment under section 7(d)(2) of this Act, the  
6 term “Native Hawaiian” shall have the mean-  
7 ing given to such term in the organic governing  
8 documents of the Native Hawaiian government.

9 (8) NATIVE HAWAIIAN GOVERNMENT.—The  
10 term “Native Hawaiian government” means the citi-  
11 zens of the government of the Native Hawaiian peo-  
12 ple that is recognized by the United States under  
13 the authority of section 7(d)(2) of this Act.

14 (9) NATIVE HAWAIIAN INTERIM GOVERNING  
15 COUNCIL.—The term “Native Hawaiian Interim  
16 Governing Council” means the interim governing  
17 council that is organized under section 7(c) of this  
18 Act.

19 (10) ROLL.—The term “roll” means the roll  
20 that is developed under the authority of section 7(a)  
21 of this Act.

22 (11) SECRETARY.—The term “Secretary”  
23 means the Secretary of the Interior.

24 (12) TASK FORCE.—The term “Task Force”  
25 means the Native Hawaiian Interagency Task Force

1 established under the authority of section 6 of this  
2 Act.

3 **SEC. 3. UNITED STATES POLICY AND PURPOSE.**

4 (a) POLICY.—The United States reaffirms that—

5 (1) Native Hawaiians are a unique and distinct  
6 aboriginal, indigenous, native people, with whom the  
7 United States has a political and legal relationship;

8 (2) the United States has a special trust rela-  
9 tionship to promote the welfare of Native Hawaiians;

10 (3) Congress possesses the authority under the  
11 Constitution to enact legislation to address the con-  
12 ditions of Native Hawaiians and has exercised this  
13 authority through the enactment of—

14 (A) the Hawaiian Homes Commission Act,  
15 1920 (42 Stat. 108, chapter 42);

16 (B) the Act entitled “An Act to provide for  
17 the admission of the State of Hawaii into the  
18 Union”, approved March 18, 1959 (Public Law  
19 86–3; 73 Stat. 4); and

20 (C) more than 150 other Federal laws ad-  
21 dressing the conditions of Native Hawaiians;

22 (4) Native Hawaiians have—

23 (A) an inherent right to autonomy in their  
24 internal affairs;

1 (B) an inherent right of self-determination  
2 and self-governance;

3 (C) the right to reorganize a Native Ha-  
4 waiian government; and

5 (D) the right to become economically self-  
6 sufficient; and

7 (5) the United States shall continue to engage  
8 in a process of reconciliation and political relations  
9 with the Native Hawaiian people.

10 (b) PURPOSE.—It is the intent of Congress that the  
11 purpose of this Act is to provide a process for the reorga-  
12 nization of a Native Hawaiian government and for the rec-  
13 ognition by the United States of the Native Hawaiian gov-  
14 ernment for purposes of continuing a government-to-gov-  
15 ernment relationship.

16 **SEC. 4. ESTABLISHMENT OF THE UNITED STATES OFFICE**  
17 **FOR NATIVE HAWAIIAN AFFAIRS.**

18 (a) IN GENERAL.—There is established within the  
19 Office of the Secretary the United States Office for Native  
20 Hawaiian Affairs.

21 (b) DUTIES OF THE OFFICE.—The United States Of-  
22 fice for Native Hawaiian Affairs shall—

23 (1) effectuate and coordinate the special trust  
24 relationship between the Native Hawaiian people

1 and the United States through the Secretary, and  
2 with all other Federal agencies;

3 (2) upon the recognition of the Native Hawai-  
4 ian government by the United States as provided for  
5 in section 7(d)(2) of this Act, effectuate and coordi-  
6 nate the special trust relationship between the Na-  
7 tive Hawaiian government and the United States  
8 through the Secretary, and with all other Federal  
9 agencies;

10 (3) fully integrate the principle and practice of  
11 meaningful, regular, and appropriate consultation  
12 with the Native Hawaiian people by providing timely  
13 notice to, and consulting with the Native Hawaiian  
14 people prior to taking any actions that may affect  
15 traditional or current Native Hawaiian practices and  
16 matters that may have the potential to significantly  
17 or uniquely affect Native Hawaiian resources, rights,  
18 or lands, and upon the recognition of the Native Ha-  
19 waiian government as provided for in section 7(d)(2)  
20 of this Act, fully integrate the principle and practice  
21 of meaningful, regular, and appropriate consultation  
22 with the Native Hawaiian government by providing  
23 timely notice to, and consulting with the Native Ha-  
24 waiian people and the Native Hawaiian government  
25 prior to taking any actions that may have the poten-

1        tial to significantly affect Native Hawaiian re-  
2        sources, rights, or lands;

3            (4) consult with the Native Hawaiian Inter-  
4        agency Task Force, other Federal agencies, and with  
5        relevant agencies of the State of Hawaii on policies,  
6        practices, and proposed actions affecting Native Ha-  
7        waiian resources, rights, or lands;

8            (5) be responsible for the preparation and sub-  
9        mittal to the Committee on Indian Affairs of the  
10       Senate, the Committee on Energy and Natural Re-  
11       sources of the Senate, and the Committee on Re-  
12       sources of the House of Representatives of an an-  
13       nual report detailing the activities of the Interagency  
14       Task Force established under section 6 of this Act  
15       that are undertaken with respect to the continuing  
16       process of reconciliation and to effect meaningful  
17       consultation with the Native Hawaiian people and  
18       the Native Hawaiian government and providing rec-  
19       ommendations for any necessary changes to existing  
20       Federal statutes or regulations promulgated under  
21       the authority of Federal law;

22            (6) be responsible for continuing the process of  
23        reconciliation with the Native Hawaiian people, and  
24        upon the recognition of the Native Hawaiian govern-  
25        ment by the United States as provided for in section



1       7(d)(2) of this Act, be responsible for continuing the  
2       process of reconciliation with the Native Hawaiian  
3       government; and

4           (7) assist the Native Hawaiian people in facili-  
5       tating a process for self-determination, including but  
6       not limited to the provision of technical assistance in  
7       the development of the roll under section 7(a) of this  
8       Act, the organization of the Native Hawaiian In-  
9       terim Governing Council as provided for in section  
10      7(c) of this Act, and the recognition of the Native  
11      Hawaiian government as provided for in section 7(d)  
12      of this Act.

13      (c) **AUTHORITY.**—The United States Office for Na-  
14      tive Hawaiian Affairs is authorized to enter into a contract  
15      with or make grants for the purposes of the activities au-  
16      thorized or addressed in section 7 of this Act for a period  
17      of 3 years from the date of the enactment of this Act.

18      **SEC. 5. DESIGNATION OF DEPARTMENT OF JUSTICE REP-**

19                      **RESENTATIVE.**

20      The Attorney General shall designate an appropriate  
21      official within the Department of Justice to assist the  
22      United States Office for Native Hawaiian Affairs in the  
23      implementation and protection of the rights of Native Ha-  
24      waiians and their political, legal, and trust relationship  
25      with the United States, and upon the recognition of the

1 Native Hawaiian government as provided for in section  
2 7(d)(2) of this Act, in the implementation and protection  
3 of the rights of the Native Hawaiian government and its  
4 political, legal, and trust relationship with the United  
5 States.

6 **SEC. 6. NATIVE HAWAIIAN INTERAGENCY TASK FORCE.**

7 (a) ESTABLISHMENT.—There is established an inter-  
8 agency task force to be known as the “Native Hawaiian  
9 Interagency Task Force”.

10 (b) COMPOSITION.—The Task Force shall be com-  
11 posed of officials, to be designated by the President,  
12 from—

13 (1) each Federal agency that establishes or im-  
14 plements policies that affect Native Hawaiians or  
15 whose actions may significantly or uniquely impact  
16 on Native Hawaiian resources, rights, or lands;

17 (2) the United States Office for Native Hawai-  
18 ian Affairs established under section 4 of this Act;  
19 and

20 (3) the Executive Office of the President.

21 (c) LEAD AGENCIES.—The Department of the Inte-  
22 rior and the Department of Justice shall serve as the lead  
23 agencies of the Task Force, and meetings of the Task  
24 Force shall be convened at the request of either of the  
25 lead agencies.

1       (d) CO-CHAIRS.—The Task Force representative of  
2 the United States Office for Native Hawaiian Affairs es-  
3 tablished under the authority of section 4 of this Act and  
4 the Attorney General’s designee under the authority of  
5 section 5 of this Act shall serve as co-chairs of the Task  
6 Force.

7       (e) DUTIES.—The responsibilities of the Task Force  
8 shall be—

9           (1) the coordination of Federal policies that af-  
10       fect Native Hawaiians or actions by any agency or  
11       agencies of the Federal Government which may sig-  
12       nificantly or uniquely impact on Native Hawaiian re-  
13       sources, rights, or lands;

14           (2) to assure that each Federal agency develops  
15       a policy on consultation with the Native Hawaiian  
16       people, and upon recognition of the Native Hawaiian  
17       government by the United States as provided in sec-  
18       tion 7(d)(2) of this Act, consultation with the Native  
19       Hawaiian government; and

20           (3) to assure the participation of each Federal  
21       agency in the development of the report to Congress  
22       authorized in section 4(b)(5) of this Act.

1 **SEC. 7. PROCESS FOR THE DEVELOPMENT OF A ROLL FOR**  
2 **THE ORGANIZATION OF A NATIVE HAWAIIAN**  
3 **INTERIM GOVERNING COUNCIL, FOR THE OR-**  
4 **GANIZATION OF A NATIVE HAWAIIAN IN-**  
5 **TERIM GOVERNING COUNCIL AND A NATIVE**  
6 **HAWAIIAN GOVERNMENT, AND FOR THE REC-**  
7 **OGNITION OF THE NATIVE HAWAIIAN GOV-**  
8 **ERNMENT.**

9 (a) ROLL.—

10 (1) PREPARATION OF ROLL.—The United  
11 States Office for Native Hawaiian Affairs shall as-  
12 sist the adult members of the Native Hawaiian com-  
13 munity who wish to participate in the reorganization  
14 of a Native Hawaiian government in preparing a roll  
15 for the purpose of the organization of a Native Ha-  
16 waiian Interim Governing Council. The roll shall in-  
17 clude the names of the—

18 (A) adult members of the Native Hawaiian  
19 community who wish to become citizens of a  
20 Native Hawaiian government and who are—

21 (i) the lineal descendants of the ab-  
22 original, indigenous, native people who re-  
23 sided in the islands that now comprise the  
24 State of Hawaii on or before January 1,  
25 1893, and who occupied and exercised sov-  
26 ereignty in the Hawaiian archipelago; or

1 (ii) Native Hawaiians who were eligi-  
2 ble in 1921 for the programs authorized by  
3 the Hawaiian Homes Commission Act (42  
4 Stat. 108, chapter 42) or their lineal de-  
5 scendants; and

6 (B) the children of the adult members list-  
7 ed on the roll prepared under this subsection.

8 (2) CERTIFICATION AND SUBMISSION.—

9 (A) COMMISSION.—

10 (i) IN GENERAL.—There is authorized  
11 to be established a Commission to be com-  
12 posed of nine members for the purpose of  
13 certifying that the adult members of the  
14 Native Hawaiian community on the roll  
15 meet the definition of Native Hawaiian, as  
16 defined in section 2(7)(A) of this Act.

17 (ii) MEMBERSHIP.—

18 (I) APPOINTMENT.—The Sec-  
19 retary shall appoint the members of  
20 the Commission in accordance with  
21 subclause (II). Any vacancy on the  
22 Commission shall not affect its powers  
23 and shall be filled in the same manner  
24 as the original appointment.

1 (II) REQUIREMENTS.—The mem-  
2 bers of the Commission shall be Na-  
3 tive Hawaiian, as defined in section  
4 2(7)(A) of this Act, and shall have ex-  
5 pertise in the certification of Native  
6 Hawaiian ancestry.

7 (III) CONGRESSIONAL SUBMIS-  
8 SION OF SUGGESTED CANDIDATES.—  
9 In appointing members of the Com-  
10 mission, the Secretary may choose  
11 such members from among—

12 (aa) five suggested can-  
13 didates submitted by the Major-  
14 ity Leader of the Senate and the  
15 Minority Leader of the Senate  
16 from a list of candidates provided  
17 to such leaders by the Chairman  
18 and Vice Chairman of the Com-  
19 mittee on Indian Affairs of the  
20 Senate; and

21 (bb) four suggested can-  
22 didates submitted by the Speaker  
23 of the House of Representatives  
24 and the Minority Leader of the  
25 House of Representatives from a

1 list provided to the Speaker and  
2 the Minority Leader by the  
3 Chairman and Ranking member  
4 of the Committee on Resources  
5 of the House of Representatives.

6 (iii) EXPENSES.—Each member of the  
7 Commission shall be allowed travel ex-  
8 penses, including per diem in lieu of sub-  
9 sistence, at rates authorized for employees  
10 of agencies under subchapter I of chapter  
11 57 of title 5, United States Code, while  
12 away from their homes or regular places of  
13 business in the performance of services for  
14 the Commission.

15 (B) CERTIFICATION.—The Commission  
16 shall certify that the individuals listed on the  
17 roll developed under the authority of this sub-  
18 section are Native Hawaiians, as defined in sec-  
19 tion 2(7)(A) of this Act.

20 (3) SECRETARY.—

21 (A) CERTIFICATION.—The Secretary shall  
22 review the Commission's certification of the  
23 membership roll and determine whether it is  
24 consistent with applicable Federal law, includ-  
25 ing the special trust relationship between the

1 United States and the indigenous, native people  
2 of the United States.

3 (B) PUBLICATION.—Upon making the de-  
4 termination authorized in subparagraph (A),  
5 the Secretary shall publish a final roll.

6 (C) APPEAL.—

7 (i) ESTABLISHMENT OF MECHA-  
8 NISM.—The Secretary is authorized to es-  
9 tablish a mechanism for an appeal of the  
10 Commission’s determination as it  
11 concerns—

12 (I) the exclusion of the name of  
13 a person who meets the definition of  
14 Native Hawaiian, as defined in section  
15 2(7)(A) of this Act, from the roll; or

16 (II) a challenge to the inclusion  
17 of the name of a person on the roll on  
18 the grounds that the person does not  
19 meet the definition of Native Hawai-  
20 ian, as so defined.

21 (ii) PUBLICATION; UPDATE.—The  
22 Secretary shall publish the final roll while  
23 appeals are pending, and shall update the  
24 final roll and the publication of the final



1 roll upon the final disposition of any ap-  
2 peal.

3 (D) FAILURE TO ACT.—If the Secretary  
4 fails to make the certification authorized in  
5 subparagraph (A) within 90 days of the date  
6 that the Commission submits the membership  
7 roll to the Secretary, the certification shall be  
8 deemed to have been made, and the Commis-  
9 sion shall publish the final roll.

10 (4) EFFECT OF PUBLICATION.—The publication  
11 of the final roll shall serve as the basis for the eligi-  
12 bility of adult members listed on the roll to partici-  
13 pate in all referenda and elections associated with  
14 the organization of a Native Hawaiian Interim Gov-  
15 erning Council and the Native Hawaiian govern-  
16 ment.

17 (b) RECOGNITION OF RIGHTS.—The right of the Na-  
18 tive Hawaiian people to organize for their common welfare  
19 and to adopt appropriate organic governing documents is  
20 hereby recognized by the United States.

21 (c) ORGANIZATION OF THE NATIVE HAWAIIAN IN-  
22 TERIM GOVERNING COUNCIL.—

23 (1) ORGANIZATION.—The adult members listed  
24 on the roll developed under the authority of sub-  
25 section (a) are authorized to—

1 (A) develop criteria for candidates to be  
2 elected to serve on the Native Hawaiian Interim  
3 Governing Council;

4 (B) determine the structure of the Native  
5 Hawaiian Interim Governing Council; and

6 (C) elect members to the Native Hawaiian  
7 Interim Governing Council.

8 (2) ELECTION.—Upon the request of the adult  
9 members listed on the roll developed under the au-  
10 thority of subsection (a), the United States Office  
11 for Native Hawaiian Affairs may assist the Native  
12 Hawaiian community in holding an election by secret  
13 ballot (absentee and mail balloting permitted), to  
14 elect the membership of the Native Hawaiian In-  
15 terim Governing Council.

16 (3) POWERS.—

17 (A) IN GENERAL.—The Native Hawaiian  
18 Interim Governing Council is authorized to rep-  
19 resent those on the roll in the implementation  
20 of this Act and shall have no powers other than  
21 those given to it in accordance with this Act.

22 (B) FUNDING.—The Native Hawaiian In-  
23 terim Governing Council is authorized to enter  
24 into a contract or grant with any Federal agen-  
25 cy, including but not limited to, the United

1 States Office for Native Hawaiian Affairs with-  
2 in the Department of the Interior and the Ad-  
3 ministration for Native Americans within the  
4 Department of Health and Human Services, to  
5 carry out the activities set forth in subpara-  
6 graph (C).

7 (C) ACTIVITIES.—

8 (i) IN GENERAL.—The Native Hawai-  
9 ian Interim Governing Council is author-  
10 ized to conduct a referendum of the adult  
11 members listed on the roll developed under  
12 the authority of subsection (a) for the pur-  
13 pose of determining (but not limited to)  
14 the following:

15 (I) The proposed elements of the  
16 organic governing documents of a Na-  
17 tive Hawaiian government.

18 (II) The proposed powers and  
19 authorities to be exercised by a Native  
20 Hawaiian government, as well as the  
21 proposed privileges and immunities of  
22 a Native Hawaiian government.

23 (III) The proposed civil rights  
24 and protection of such rights of the  
25 citizens of a Native Hawaiian govern-

1                   ment and all persons subject to the  
2                   authority of a Native Hawaiian gov-  
3                   ernment.

4                   (ii) DEVELOPMENT OF ORGANIC GOV-  
5                   ERNING DOCUMENTS.—Based upon the  
6                   referendum, the Native Hawaiian Interim  
7                   Governing Council is authorized to develop  
8                   proposed organic governing documents for  
9                   a Native Hawaiian government.

10                  (iii) DISTRIBUTION.—The Native Ha-  
11                  waiian Interim Governing Council is au-  
12                  thorized to distribute to all adult members  
13                  of those listed on the roll, a copy of the  
14                  proposed organic governing documents, as  
15                  drafted by the Native Hawaiian Interim  
16                  Governing Council, along with a brief im-  
17                  partial description of the proposed organic  
18                  governing documents.

19                  (iv) CONSULTATION.—The Native Ha-  
20                  waiian Interim Governing Council is au-  
21                  thorized to freely consult with those mem-  
22                  bers listed on the roll concerning the text  
23                  and description of the proposed organic  
24                  governing documents.

25                  (D) ELECTIONS.—

1 (i) IN GENERAL.—The Native Hawai-  
2 ian Interim Governing Council is author-  
3 ized to hold elections for the purpose of  
4 ratifying the proposed organic governing  
5 documents, and upon ratification of the or-  
6 ganic governing documents, to hold elec-  
7 tions for the officers of the Native Hawai-  
8 ian government.

9 (ii) ASSISTANCE.—Upon the request  
10 of the Native Hawaiian Interim Governing  
11 Council, the United States Office of Native  
12 Hawaiian Affairs may assist the Council in  
13 conducting such elections.

14 (4) TERMINATION.—The Native Hawaiian In-  
15 terim Governing Council shall have no power or au-  
16 thority under this Act after the time at which the  
17 duly elected officers of the Native Hawaiian govern-  
18 ment take office.

19 (d) RECOGNITION OF THE NATIVE HAWAIIAN GOV-  
20 ERNMENT.—

21 (1) PROCESS FOR RECOGNITION.—

22 (A) SUBMITTAL OF ORGANIC GOVERNING  
23 DOCUMENTS.—The duly elected officers of the  
24 Native Hawaiian government shall submit the

1 organic governing documents of the Native Ha-  
2 waiian government to the Secretary.

3 (B) CERTIFICATIONS.—Within 90 days of  
4 the date that the duly elected officers of the  
5 Native Hawaiian government submit the or-  
6 ganic governing documents to the Secretary,  
7 the Secretary shall certify that the organic gov-  
8 erning documents—

9 (i) were adopted by a majority vote of  
10 the adult members listed on the roll pre-  
11 pared under the authority of subsection  
12 (a);

13 (ii) are consistent with applicable Fed-  
14 eral law and the special trust relationship  
15 between the United States and the indige-  
16 nous native people of the United States;

17 (iii) provide for the exercise of those  
18 governmental authorities that are recog-  
19 nized by the United States as the powers  
20 and authorities that are exercised by other  
21 governments representing the indigenous,  
22 native people of the United States;

23 (iv) provide for the protection of the  
24 civil rights of the citizens of the Native  
25 Hawaiian government and all persons sub-

1           ject to the authority of the Native Hawai-  
2           ian government, and to assure that the  
3           Native Hawaiian government exercises its  
4           authority consistent with the requirements  
5           of section 202 of the Act of April 11, 1968  
6           (25 U.S.C. 1302);

7                 (v) prevent the sale, disposition, lease,  
8           or encumbrance of lands, interests in  
9           lands, or other assets of the Native Hawai-  
10          ian government without the consent of the  
11          Native Hawaiian government;

12                (vi) establish the criteria for citizen-  
13          ship in the Native Hawaiian government;  
14          and

15               (vii) provide authority for the Native  
16          Hawaiian government to negotiate with  
17          Federal, State, and local governments, and  
18          other entities.

19               (C) FAILURE TO ACT.—If the Secretary  
20          fails to act within 90 days of the date that the  
21          duly elected officers of the Native Hawaiian  
22          government submitted the organic governing  
23          documents of the Native Hawaiian government  
24          to the Secretary, the certifications authorized in

1           subparagraph (B) shall be deemed to have been  
2           made.

3           (D) RESUBMISSION IN CASE OF NON-  
4           COMPLIANCE WITH FEDERAL LAW.—

5           (i) RESUBMISSION BY THE SEC-  
6           RETARY.—If the Secretary determines that  
7           the organic governing documents, or any  
8           part thereof, are not consistent with appli-  
9           cable Federal law, the Secretary shall re-  
10          submit the organic governing documents to  
11          the duly elected officers of the Native Ha-  
12          waiian government along with a justifica-  
13          tion for each of the Secretary’s findings as  
14          to why the provisions are not consistent  
15          with such law.

16          (ii) AMENDMENT AND RESUBMISSION  
17          BY THE NATIVE HAWAIIAN GOVERN-  
18          MENT.—If the organic governing docu-  
19          ments are resubmitted to the duly elected  
20          officers of the Native Hawaiian govern-  
21          ment by the Secretary under clause (i), the  
22          duly elected officers of the Native Hawai-  
23          ian government shall—

24                  (I) amend the organic governing  
25                  documents to ensure that the docu-



1                   ments comply with applicable Federal  
2                   law; and

3                   (II) resubmit the amended or-  
4                   ganic governing documents to the Sec-  
5                   retary for certification in accordance  
6                   with subparagraphs (B) and (C).

7           (2) FEDERAL RECOGNITION.—

8                   (A) RECOGNITION.—Notwithstanding any  
9                   other provision of law, upon the election of the  
10                  officers of the Native Hawaiian government and  
11                  the certifications (or deemed certifications) by  
12                  the Secretary authorized in paragraph (1), Fed-  
13                  eral recognition is hereby extended to the Na-  
14                  tive Hawaiian government as the representative  
15                  governing body of the Native Hawaiian people.

16                  (B) NO DIMINISHMENT OF RIGHTS OR  
17                  PRIVILEGES.—Nothing contained in this Act  
18                  shall diminish, alter, or amend any existing  
19                  rights or privileges enjoyed by the Native Ha-  
20                  waiian people which are not inconsistent with  
21                  the provisions of this Act.

22 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

23           There is authorized to be appropriated such sums as  
24           may be necessary to carry out the activities authorized in  
25           this Act.

1 **SEC. 9. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**  
2 **THORITY; NEGOTIATIONS.**

3 (a) REAFFIRMATION.—The delegation by the United  
4 States of authority to the State of Hawaii to address the  
5 conditions of Native Hawaiians contained in the Act enti-  
6 tled “An Act to provide for the admission of the State  
7 of Hawaii into the Union” approved March 18, 1959  
8 (Public Law 86–3; 73 Stat. 5) is hereby reaffirmed.

9 (b) NEGOTIATIONS.—Upon the Federal recognition  
10 of the Native Hawaiian government pursuant to section  
11 7(d)(2) of this Act, the United States is authorized to ne-  
12 gotiate and enter into an agreement with the State of Ha-  
13 waii and the Native Hawaiian government regarding the  
14 transfer of lands, resources, and assets dedicated to Na-  
15 tive Hawaiian use under existing law as in effect on the  
16 date of the enactment of this Act to the Native Hawaiian  
17 government.

18 **SEC. 10. DISCLAIMER.**

19 Nothing in this Act is intended to serve as a settle-  
20 ment of any claims against the United States, or to affect  
21 the rights of the Native Hawaiian people under inter-  
22 national law.

23 **SEC. 11. REGULATIONS.**

24 The Secretary is authorized to make such rules and  
25 regulations and such delegations of authority as the Sec-

1 retary deems necessary to carry out the provisions of this  
2 Act.

3 **SEC. 12. SEVERABILITY.**

4       In the event that any section or provision of this Act,  
5 or any amendment made by this Act is held invalid, it  
6 is the intent of Congress that the remaining sections or  
7 provisions of this Act, and the amendments made by this  
8 Act, shall continue in full force and effect.

Passed the House of Representatives September 26,  
2000.

Attest:

JEFF TRANDAHL,

*Clerk.*

**Calendar No. 893**

106TH CONGRESS  
2D SESSION

**H.R. 4904**

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**AN ACT**

To express the policy of the United States regarding the United States relationship with Native Hawaiians, to provide a process for the reorganization of a Native Hawaiian government and the recognition by the United States of the Native Hawaiian government, and for other purposes.

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OCTOBER 2 (legislative day, SEPTEMBER 22), 2000

Read twice and placed on the calendar